



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 20, 1996

Ms. Joanne Wright
Dewitt C. Greer State Highway Bldg.
125 East 11th Street
Austin, Texas 78701-2483

OR96-0990

Dear Ms. Wright:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39728.

The Texas Department of Transportation (the "department") received a request for a sexual harassment complaint file. The requestor is an individual who alleged she was sexually harassed. You have highlighted portions of the file that you are concerned may implicate privacy interests of certain individuals. You contend that the information you have highlighted is excepted from disclosure pursuant to section 552.101.

Information is excepted from disclosure by a common-law right of privacy under section 552.101 if the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976) *cert. denied*, 430 U.S. 930 (1977). Although information relating to the internal investigation of sexual harassment involving public employees may be highly intimate or embarrassing, the public generally has a legitimate interest in knowing the details of such an investigation. Open Records Decision No. 444 (1986).

In *Morales v. Ellen*, 840 S.W.2d 519, 525 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the

misconduct responding to the allegations, and a summary of the board of inquiry that conducted the investigation. *Id.* The court ordered the release of the affidavit of the person under investigation and the summary, stating that the public's interest was sufficiently served by the disclosure of these documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

You submitted to this office statements from victims of alleged sexual harassment, an individual accused of harassment, and witnesses to both the alleged harassment and to other types of alleged employee misconduct. You also submitted a copy of an investigation summary. In accordance with *Ellen*, you must withhold from public release the statements of victims of and witnesses to alleged sexual harassment. The investigation report and statement of the individual accused of harassment is subject to public release, but only after redacting any information identifying the victims of and witnesses to alleged sexual harassment.¹ We have marked sample pages to show the type of information that would generally be withheld from the public.

In this situation, the requestor is a victim of alleged sexual harassment. Identifying information about the requestor may not be withheld from her on the basis of protecting her own privacy interests. *See* Gov't Code § 552.023(a). We assume that you have already provided the requestor her own statement. You should also release to the requestor the investigation report, and the statement of the individual accused of the sexual harassment. Identifying information about the victim and her family should not be redacted, however, identifying information about other victims of and witnesses to alleged sexual harassment must be withheld from disclosure. Also, you must not release to the public or to this requestor the other victims' and witnesses' statements.

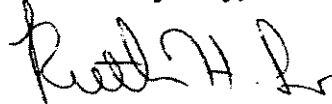
We have reviewed the specific items of information you marked. It appears that you have marked information that you think may be embarrassing to some employees and third parties. Our review of the marked information indicates that it is of legitimate public interest and may not be withheld from disclosure, except to the extent it identifies victims of and witnesses to alleged sexual harassment.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

¹We note that the name of a witness to other types of employee misconduct would not generally be protected by privacy.

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy". The signature is fluid and cursive, with the first name "Ruth" being the most prominent.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 39728

Enclosures: Marked documents